

BOARD OF ZONING APPEALS MEETING

A G E N D A

TOWN OF CHINCOTEAGUE

May 8, 2008 - 7:30 P.M. – Council Chambers - Town Hall

CALL TO ORDER

AGENDA ADOPTION:

1. Approval of minutes of April 10, 2008
2. Public Participation
3. Appeal 08-05-01. Michael Inman agent for Pony Pines LLC, request for relief of condition of requiring off site drainage.

ADJOURN:

MINUTES OF THE MEETING APRIL 10, 2008
CHINCOTEAGUE BOARD OF ZONING APPEALS

MEMBERS PRESENT:

Mr. Arthur Leonard
Mr. Jessi Speidel
Mr. Myron Birch
Mr. Mike McGee
Mr. Donald Thornton
Mr. Jack Gilliss
Mr. Robert Cherrix
Kenny L. Lewis, Staff Support

MEMBERS ABSENT:

1. Call to Order

Mr. Leonard called the meeting to order at 7:30 pm.

2. Approval of Minutes of Meeting Held February 14, 2008

Mr. Speidel motioned, seconded by Mr. Cherrix, to approve the minutes as presented. The motion was unanimously approved.

3. Appeal 08-04-1

A request from Dean Orsino agent for Laurie Walton, 4211 Main Street, for a variance from Article 4, section 4.6.5 (2) of the Town of Chincoteague's Zoning Ordinance. The petitioner wishes to relocate a 20' x 24' shed on property located at the above address. The new location of the shed will be placed 0' from the right-of-way located on the south side of the property. Current zoning requires the structure be 15' from said lot line. This property is zoned Commercial District C-2.

4. Board Action on Appeal

Mr. Birch motioned, seconded by Mr. Gillis to approve the request. All in favor. Motion carried. Variance approved.

5. Adjournment

Mr. Leonard adjourned the meeting.

Arthur Leonard, Chairman

FAXED
April 16, 2008

Eastern Shore Post
P.O. Box 318
Tasley, VA 23441

Dear Sirs:

The Town of Chincoteague request the following notice of public hearing be published in the Eastern Shore Post on Wednesday April 23, 2008 and Wednesday April 30, 2008:

Public Notice

The Board of Zoning Appeals of the Town of Chincoteague will hold a public hearing on May 8, 2008 at 7:30 p.m. in the Council Chambers located at 6150 Community Drive to receive public comments and views on the following zoning matters:

Appeal 08-05-1 A request from Michael Inman, Esquire agent for Pony Pines LLC, 7503 Eastside Road, to remove a condition from terms of a variance previously granted by the Board of Zoning Appeals. The petitioner request relief of the condition "Drainage shall be installed to move excess water to the waterfront property across the road". This property is zoned Commercial District C-1.

Kenny L. Lewis
Zoning Administrator 

CHINCOTEAGUE, VIRGINIA
*** APPEAL TO THE**
BOARD OF ZONING APPEALS

* APPLICATION TO REMOVE A CONDITION FROM TERMS OF VARIANCE PREVIOUSLY GRANTED

APPEAL CASE NUMBER: _____

FEE: \$ 450.00

I, MICHAEL A. INMAN, ESQUIRE,

AGENT FOR PONEY PINES, LLC, A NJ LIMITED LIABILITY COMPANY WOULD LIKE TO FILE THE
FOLLOWING APPEAL WITH THE BOARD OF ZONING APPEALS BASED UPON THE NOTED
STATE CODE(S):

TITLE 15.2, CODE OF VIRGINIA, 1959 (AS AMENDED)

(CHECK ALL THAT APPLY)

1. ☐ AN APPEAL OF AN OFFICER, REQUIREMENT, DECISION OR DETERMINATION
 OF AN ADMINISTRATIVE OFFICER.
2. ☐ AN APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR.
3. ☐ AN INTERPRETATION OF THE DISTRICT ZONING MAP, IN THAT THERE IS AN
 UNCERTAINTY AS TO THE LOCATION OF A DISTRICT BOUNDARY.
4. ☐ AN APPEAL FOR A VARIANCE. THE APPLICANT IS REQUIRED TO SHOW THAT
 A LAND USE HARDSHIP EXIST. SEE ATTACHED EXAMPLE SHEET FOR
 HARDSHIP CRITERIA.
5. ☐ AN APPEAL FOR A VARIANCE OF THE FLOOD PLAIN MANAGEMENT
 ORDINANCE
6. ☒ OTHER; RELIEF OF CONDITIONS, ETC.

BOARD OF ZONING APPEALS USE ONLY:

MEETING DATE: _____

APPEAL ACTION:

☐ APPROVED

☐ DENIED

☐ CONDITIONAL: _____

BZA, SECRETARY

DATE: _____

(1.) RULES AND REGULATIONS TO FILE FOR APPEAL:

(A). APPLICANTS OR THEIR AGENTS SHALL NOT CONTACT ANY BOARD MEMBER TO DISCUSS THE CASE PRIOR TO THE SCHEDULED PUBLIC HEARING OF THEIR APPEAL.

(B). FAILURE OF APPLICANT OR AGENT TO APPEAR BEFORE THE BOARD MAY BE REASON FOR DENIAL.

(C). APPLICANT MUST POST APPEAL NOTICE FURNISHED BY THE ZONING ADMINISTRATOR ON SAID PROPERTY, VISIBLE FROM THE STREET.

(D). APPLICANT SHALL SUBMIT A PLOT PLAN, TO SCALE, OF THE SAID PROPERTY IDENTIFYING THE FOLLOWING:

1. ALL EXISTING STRUCTURES LOCATED ON SAID PROPERTY.
2. PROPOSED NEW STRUCTURES.
3. SETBACKS FROM FRONT, SIDES AND REAR PROPERTY LINES.
4. LOCATION OF EXISTING SEPTIC, DRAIN FIELDS OR CESSPOOLS.
5. LOCATION OF EASEMENTS, RIGHT-OF-WAYS AND PUBLIC ROADS THAT ADJOIN OR ENTER SAID PROPERTY.

(E). THE CHINCOTEAGUE BOARD OF ZONING APPEALS HAS SEVEN (7) MEMBERS. TO OBTAIN APPROVAL FOR A VARIANCE OR SPECIAL USE PERMIT, FOUR (4) MEMBERS MUST VOTE IN YOUR FAVOR.

(F). ANY DECISION OF THE BOARD OF ZONING APPEALS MAY BE APPEALED TO THE CIRCUIT COURT OF ACCOMACK COUNTY WITHIN 30 DAYS OF RECEIPT OF THE DECISION MADE.

(G). THE BZA MAY IMPOSE SUCH CONDITIONS REGARDING THE LOCATION, CHARACTER AND OTHER FEATURES OF THE PROPOSED STRUCTURE OR USE AS IT MAY DEEM NECESSARY IN THE PUBLIC INTEREST.

(2.) NOTIFICATION OF PROPERTY OWNERS:

ALL APPLICATIONS SHALL BE ACCOMPANIED BY WRITTEN COMMENTS FROM OWNERS OF REAL ESTATE AS FOLLOWS:

(A). VARIANCE:

APPLICANTS SHALL SUBMIT WRITTEN COMMENTS FROM ALL ADJOINING PROPERTY OWNERS INCLUDING THE PROPERTY OWNERS ACROSS THE STREET(S) OR ACROSS BODIES OF WATERS ADJACENT TO OR DIVIDING TWO PROPERTIES. THE BZA MAY REQUIRE THE APPLICANT TO SUBMIT WRITTEN COMMENTS FROM ADDITIONAL PROPERTY OWNERS.

(B). WRITTEN NOTIFICATION OF APPEAL:

PROPERTY OWNERS NOT AVAILABLE FOR WRITTEN COMMENT SHALL BE NOTIFIED OF THE PROPOSED REQUEST BY CERTIFIED MAIL.

A COPY OF THE REGISTERED MAIL AND THE CERTIFIED MAIL RECEIPT MUST BE SUBMITTED AT THE TIME OF FILING THE APPEAL.

RETURN RECEIPT OF THE CERTIFIED MAIL MUST BE GIVEN TO THE ZONING ADMINISTRATOR A MINIMUM OF 5 DAYS PRIOR TO THE MEETING DATE.

TOWN OF CHINCOTEAGUE
BOARD OF ZONING APPEALS

APPLICATION TO REMOVE A CONDITION FROM
TERMS OF VARIANCE PREVIOUSLY GRANTED

Property Address: 7503 Eastside Road
Chincoteague, Virginia


Property Owner: Pony Pines, LLC

The undersigned Applicant, having been granted the attached variance from the Town of Chincoteague Subdivision Ordinance on January 12, 2006, does hereby request removal of condition number 1, which states "Drainage shall be installed to move excess water to the waterfront property across the road."

The justification for the request for removal of condition number 1 is based on the attached letter from Michael Cosby, Public Works Director for the Town of Chincoteague dated June 22, 2007, which states "I have reviewed the plans and engineer's reports for the Pony Pines, LLC property on Eastside Drive and believe that the existing drainage in the right of way will be adequate for your stated purposes. We will not require off-site storm drainage facilities."

Respectfully submitted,

PONY PINES LLC

By: 
Michael A. Inman
Counsel to Applicant

Date: April 11, 2008

PLEASE PRINT

THE PROPERTY IN WHICH THIS ~~APPEAL~~ IS SUBMITTED IS LOCATED AT (911 ADDRESS)

7503 EASTSIDE DRIVE, CHINCOTEAGUE, VIRGINIA

TAX MAP # 30A4-A-44A

* APPLICATION TO REMOVE A CONDITION FROM TERMS OF VARIANCE

30A4-A-44B

THIS PROPERTY IS OWNED BY: PREVIOUSLY GRANTED

30A4-A-52

30A4-A-53

NAME: PONEY PINES, LLC, A NJ LIMITED LIABILITY COMPANY

ADDRESS: POST OFFICE BOX 120

CITY, STATE, ZIP: CAPE MAY COURT HOUSE, NEW JERSEY 08210

PHONE: (609) 465-4014

WORK PHONE: (609) 465-2300

HAS ANY PREVIOUS APPLICATION OR ~~APPEAL~~ BEEN FILED IN CONNECTION WITH THESE PREMISES?

() NO

(xx) YES, EXPLAIN: VARIANCE FROM THE TOWN'S SUBDIVISION ORDINANCE TO CONSTRUCT A 30' RIGHT OF WAY IN LIEU OF A 50' RIGHT OF WAY APPROVED 1/16/06 (SEE ATTACHED EXHIBIT A)

IS THIS ~~APPEAL~~ FILED DUE TO A ZONING VIOLATION IDENTIFIED BY THE ZONING ADMINISTRATOR? *APPLICATION TO REMOVE A CONDITION FROM TERMS OF VARIANCE PREVIOUSLY GRANTED

(xx) NO

() YES, IF THE VIOLATION HAS NOT BEEN CORRECTED, EXPLAIN WHY;

ARTICLE(S) AND SECTION(S) THAT APPLIES TO YOUR ~~APPEAL~~: N/A

APPLICATION TO REMOVE A CONDITION FROM TERMS OF VARIANCE PREVIOUSLY GRANTED

(1.) ARTICLE: SECTION: REQUIRES:

(2.) ARTICLE: SECTION: REQUIRES:

(3.) EXPLAIN REASON FOR ~~APPEAL~~ APPLICATION TO REMOVE A CONDITION FROM TERMS OF VARIANCE
THIS APPLICATION FOR MODIFICATION OF PREVIOUS CONDITIONS IS FOR THE PURPOSE OF REQUESTING
THE REMOVAL OF CONDITION #1 AS REQUIRED IN THE VARIANCE APPROVAL LETTER FROM THE SECRETARY
OF THE BZA DATED 1/16/06 (SEE EXHIBIT A) PURSUANT TO A LETTER FROM MICHAEL COSBY, PUBLIC
WORKS DIRECTOR FOR THE TOWN OF CHINCOTEAGUE (SEE EXHIBIT B) WHICH STATES THAT THE EXISTING
DRAINAGE FIELD IN THE RIGHT OF WAY WILL BE ADEQUATE AND THAT ADDITIONAL OFF-SITE STORM
DRAINAGE FACILITIES WILL NOT BE REQUIRED.

GUIDELINES USED BY THE BOARD OF ZONING APPEALS IN GRANTING A VARIANCE

In order for the Board or Zoning Appeals to review your request for a variance, the threshold question for the BZA in considering an application for a variance "is whether the effect of the zoning ordinance upon the property under consideration, as it stands, interferes with all reasonable beneficial uses of the property, taken as a whole". If the answer is in the negative, the BZA has no authority to go further.

☒ yes
☐ no

Please answer the following questions:

(1). Does the strict application of the ordinance result in unnecessary or unreasonable hardship to the property owner?

☒ yes, Explain;

SUBMITTED WITH ORIGINAL APPLICATION FOR VARIANCE

☐ no

(2). Is the need for the variance shared generally by other properties?

☐ yes, Explain;

☒ no THE AREA IS GENERALLY DEVELOPED WITH BOTH RESIDENTIAL AND COMMERCIAL USES ON TRACTS THAT PERMIT CONFORMITY TO THE ORDINANCE.

(3). Is the variance contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done.

☐ yes, Explain;

☒ no

All of the above questions must be answered. Failure to complete the above questions shall result in your application not being processed.

TOWN OF CHINCOTEAGUE
BOARD OF ZONING APPEALS

NOTICE OF HEARING

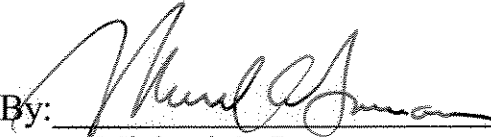
APPLICATION TO REMOVE A CONDITION FROM
TERMS OF VARIANCE PREVIOUSLY GRANTED

Property Address: 7503 Eastside Road
 Chincoteague, Virginia

Property Owner: Pony Pines, LLC

PLEASE TAKE NOTICE that on MAY 8, 2008, THE BOARD OF ZONING APPEALS will consider the Application of Pony Pines, LLC to remove one of the conditions placed on a variance it obtained from this Board on January 12, 2006, to wit: the removal of a condition requiring off site drainage, based upon a written statement from the Public Works Director of the Town of Chincoteague set forth on the attached Application.

PONY PINES LLC

By: 

Michael A. Inman
Counsel to Applicant

Date: 4-14-08

EXHIBIT A

January 19, 2006

Thomas Dix, Jr. Esquire
P. O. Box 577
Accomac VA 23301

RE: Board of Zoning Appeals

Dear Mr. Dix:

On January 12, 2006 the Board of Zoning Appeals met to review your request for a variance from the Town's Subdivision Ordinance to construct a 30' right-of-way in lieu of the required 50' right-of-way and your request for a variance from the Town's Zoning Ordinance to allow three separate clusters of buildings in lieu of all the units being attached for your client Pony Pines L.L.C at 7503 Eastside Road.

Please be advised your request is conditionally approved.

The Board has made the following conditions as part of their approval:

1. Drainage shall be installed to move excess water to the waterfront property across the road.
2. The third level decks shall not be installed.
3. A border shall be planted around the septic systems to conceal such units.

You or any aggrieved person has the right to appeal this decision to the Circuit Court within 30 days of this notice. The 30 days shall begin two days after the postmark date of this letter.

If you have any questions concerning this approval please give me a call at 336-6519.

Sincerely,

Kenny L. Lewis
Secretary, BZA

CC: File



TOWN OF CHINCOTEAGUE, INC.

EXHIBIT B

Frederick W. Schmidt, Jr
106 N. Main Street Unit D
P.O. Box 120
Cape May Court House, NJ 08210-0120

June 22, 2007

Dear Mr. Schmidt,

I have reviewed the plans and engineer's reports for the Pony Pines, LLC property on Eastside Drive and believe that the existing drainage in the right of way will be adequate for your stated purposes. We will not require additional off-site storm drainage facilities. Please let me know if you have any questions.

Sincerely,

Michael Cosby
Public Works Director

INMAN & STRICKLER P.L.C.

ATTORNEYS AND COUNSELORS AT LAW

MICHAEL A. INMAN • STEWART M. KAHN* • BARRY RANDOLPH KOCH
JEANNE S. LAUER • STEVEN L. LAUER • GREGORY J. MONTERO • VINCENT R. OLIVIERI
ANDREA W. PHELPS • STEPHEN A. STRICKLER • ROS R. WILLIS

**Also admitted in NY, FL & SC*

April 14, 2008

Mr. Kenny L. Lewis
Zoning Administrator
Town of Chincoteague
6150 Community Drive
Chincoteague Island, VA 23336

VIA: FEDERAL EXPRESS

Re: Pony Pines, LLC
7503 Eastside Drive, Chincoteague, Virginia
Tax Map #s: 30A4-A44A, 30A4-A-44B, 30A4-A-52, 30A4-A-53
Request for Modification of Conditions on grant of Zoning Variance

Dear Mr. Lewis:

Pursuant to our phone conversation on Friday, April 11, enclosed you will find the following regarding the above reference request for modification of conditions:

1. Executed Application to Remove a Condition from Terms of Variance Previously Granted;
2. Letter to be forwarded to all adjoining lot owners; and
3. Notice of Hearing to be forwarded to all adjoining lot owners.

We have provided Shore Title with a copy of the list of adjacent property owners that was used when the Zoning Variance application was submitted in 2006 to determine if there have been any title transfers since that time. We will provide you with a list of owners to whom we have forwarded the enclosed letter and notice as soon as we have the updated list of owners.

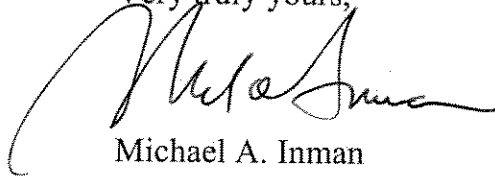
INMAN & STRICKLER P.L.C.

Mr. Kenny Lewis
April 14, 2008
Page 2

I would appreciate it if you would let me know when this matter has been placed on the May 8, 2008 Chincoteague Board of Zoning Appeals agenda so that I can arrange to be present at the meeting.

Looking forward to hearing from you as soon as possible, I am

Very truly yours,



Michael A. Inman

MAI/jdk

cc: F. W. Schmidt, Jr.

INMAN & STRICKLER P.L.C.

ATTORNEYS AND COUNSELORS AT LAW

MICHAEL A. INMAN • STEWART M. KAHN* • BARRY RANDOLPH KOCH
JEANNE S. LAUER • STEVEN L. LAUER • GREGORY J. MONTERO • VINCENT R. OLIVIERI
ANDREA W. PHELPS • STEPHEN A. STRICKLER • ROS R. WILLIS

**Also admitted in NY, FL & SC*

April ____, 2008

{TO ALL ADJOINING PROPERTY OWNERS}

VIA: CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Pony Pines, LLC
7503 Eastside Drive, Chincoteague, Virginia
Tax Map #s: 30A4-A44A, 30A4-A-44B, 30A4-A-52, 30A4-A-53
Request for Modification of Conditions on grant of Zoning Variance

Dear Property Owner

Please find enclosed a copy of an Application and Notice of Hearing relative to the development of the property adjacent to your property, which is owned by Pony Pines, LLC. This property received a variance from the Town of Chincoteague last year which included several conditions. One of the conditions had to do with certain drainage issues and, upon further study by the Town's engineer, it became clear that part of the work was not necessary. This Application simply seeks to officially eliminate that condition.

If you have comments or questions about this Request for Modification of Conditions, you may call me at 757-486-7055; and/or send in the enclosed comment sheet to the Zoning Administrator's Office, attention Kenny Lewis, Zoning Administrator, 6150 Community Drive, Chincoteague Island, VA 23336; and/or attend the hearing on May 8, 2008.

Thanking you for your attention to this matter.

Very truly yours,

Michael A. Inman

PLEASE INDICATE YOUR APPROVAL OR DISAPPROVAL OF THE PROPOSED LAND USE AS STATED IN THE APPLICATION BY CHECKING THE APPROPRIATE SPACE. SPECIFY THE LOCATION OF YOUR PROPERTY; NORTH, EAST, SOUTH OR WEST OF THE APPLICANTS PROPERTY.

TAX MAP #	30A4-A-45	LOCATION OF PROPERTY	North side of Eastside Road
NAME:	Mary F. Audet		
ADDRESS:	7463 Eastside Road, Chincoteague, VA 23336	PHONE:	
COMMENTS:			
<input type="checkbox"/> APPROVE REQUEST		<input type="checkbox"/> DISAPPROVE REQUEST	
SIGNATURE:		DATE:	

TAX MAP #	30A4-44C	LOCATION OF PROPERTY	South side of Eastside Road
NAME:	James T. Frese		
ADDRESS:	7444 Eastside Road, Chincoteague, VA 23336	PHONE:	
COMMENTS:			
<input type="checkbox"/> APPROVE REQUEST		<input type="checkbox"/> DISAPPROVE REQUEST	
SIGNATURE:		DATE:	

TAX MAP #	30A4-20-A	LOCATION OF PROPERTY	South side of Eastside Road
NAME:	Ann Swift		
ADDRESS:	7444 Eastside Road, Chincoteague, VA 23336	PHONE:	
COMMENTS:			
<input type="checkbox"/> APPROVE REQUEST		<input type="checkbox"/> DISAPPROVE REQUEST	
SIGNATURE:		DATE:	

TAX MAP # 30A4-A-44D **LOCATION OF PROPERTY** South side of Eastside Road

NAME: Sea Tag Lodge Condominium Association

ADDRESS: c/o Brian Sheron, 17120 Campbell Farm Road, Poolesville, MD 20837 **PHONE:**

COMMENTS:

() APPROVE REQUEST () DISAPPROVE REQUEST

SIGNATURE: **DATE:**

TAX MAP # 30A4-20-C **LOCATION OF PROPERTY** South side of Eastside Road
on the water

NAME: Mark J. Frese, James R. Swift, III & Ann F. Swift

ADDRESS: 7444 Eastside Road, Chincoteague, VA 23336 **PHONE:**

COMMENTS:

() APPROVE REQUEST () DISAPPROVE REQUEST

SIGNATURE: **DATE:**

TAX MAP # 30A4-A-51 **LOCATION OF PROPERTY** South side of Eastside Road
on the water

NAME: Allen H. Mitchell & June A. Mitchell

ADDRESS: 13747 Glissens Mill Road, Mt. Airy, MD 21771 **PHONE:**

COMMENTS:

() APPROVE REQUEST () DISAPPROVE REQUEST

SIGNATURE: **DATE:**

TAX MAP # 30A4-54A; 30A4-A-54B
& 30A4-A-55A **LOCATION OF PROPERTY** North side of Eastside Road

NAME: Charles D. Kambarn

ADDRESS: 23879 Bailey Neck Drive, Onancock, VA 83417 **PHONE:**

COMMENTS:

() APPROVE REQUEST () DISAPPROVE REQUEST

SIGNATURE: **DATE:**

TAX MAP #	30A4-2-49B	LOCATION OF PROPERTY	On Sunrise Drive Circle
NAME:	Leroy J. & Barbara M. Brownback		
ADDRESS:	4268 Sunrise Drive Circle, Chincoteague, VA 23336	PHONE:	
COMMENTS:			
() APPROVE REQUEST		() DISAPPROVE REQUEST	
SIGNATURE:			DATE:

TAX MAP #	30A4-2-48B	LOCATION OF PROPERTY	On Sunrise Drive Circle
NAME:	Kathy A. Scott & Gerald W. Scott		
ADDRESS:	4264 Sunrise Drive Circle, Chincoteague, VA 23336	PHONE:	
COMMENTS:			
() APPROVE REQUEST		() DISAPPROVE REQUEST	
SIGNATURE:			DATE:

TAX MAP #	30A4-2-47B	LOCATION OF PROPERTY	On Sunrise Drive Circle
NAME:	Larry T. Harper		
ADDRESS:	4262 Sunrise Drive Circle, Chincoteague, VA 23336	PHONE:	
COMMENTS:			
() APPROVE REQUEST		() DISAPPROVE REQUEST	
SIGNATURE:			DATE:

TAX MAP #	30A4-2-46B	LOCATION OF PROPERTY	On Sunrise Drive Circle
NAME:	Rocky R. & Brenda T. Taylor		
ADDRESS:	4256 Sunrise Drive Circle, Chincoteague, VA 23336	PHONE:	
COMMENTS:			
() APPROVE REQUEST		() DISAPPROVE REQUEST	
GNATURE:			DATE:

TAX MAP # 304A-42-A LOCATION OF PROPERTY _____
NAME: Grand Bay Court Owners Association
c/o Roger A. Limer
ADDRESS: 130 2nd Avenue, Pitman, NJ 08071 PHONE: _____
COMMENTS: _____
(☐) APPROVE REQUEST (☐) DISAPPROVE REQUEST
SIGNATURE: _____ DATE: _____

TAX MAP # _____ LOCATION OF PROPERTY _____
NAME: _____
ADDRESS: _____ PHONE: _____
COMMENTS: _____
(☐) APPROVE REQUEST (☐) DISAPPROVE REQUEST
SIGNATURE: _____ DATE: _____

TAX MAP # _____ LOCATION OF PROPERTY _____
NAME: _____
ADDRESS: _____ PHONE: _____
COMMENTS: _____
(☐) APPROVE REQUEST (☐) DISAPPROVE REQUEST
SIGNATURE: _____ DATE: _____

TAX MAP # _____ LOCATION OF PROPERTY _____
NAME: _____
ADDRESS: _____ PHONE: _____
COMMENTS: _____
(☐) APPROVE REQUEST (☐) DISAPPROVE REQUEST
SIGNATURE: _____ DATE: _____

Postal Service
CERTIFIED MAIL RECEIPT
(Certified Mail Only; No Insurance Coverage Provided)

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

OFFICIAL USE

Postage \$
Certified Fee
Receipt Fee (Required)
Delivery Fee (Required)
Insurance & Fees \$

Postmark
Here

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Ann Swift
7444 Eastside Road
Chincoteague, Va 23336

A. Signature
X
☐ Agent
☐ Addressee
B. Received by (Printed Name)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

James T. Freese
7444 Eastside Rd
Chincoteague Va 23336
January 2001 See Reverse for Instructions

2. Article Number (Transfer from service label) 7001 2510 0005 4406 4296

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Postal Service
CERTIFIED MAIL RECEIPT
(Certified Mail Only; No Insurance Coverage Provided)

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

OFFICIAL USE

Postage \$
Certified Fee
Receipt Fee (Required)
Delivery Fee (Required)
Insurance & Fees \$

Postmark
Here

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

James T. Freese
7444 Eastside Road
Chincoteague VA 23336

A. Signature
X
☐ Agent
☐ Addressee
B. Received by (Printed Name)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Mary F. Audet
7463 Eastside Rd
Chincoteague VA 23336
January 2001 See Reverse for Instructions

Article Number (Transfer from service label) 7001 2510 0005 4406 4302

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Postal Service
CERTIFIED MAIL RECEIPT
(Certified Mail Only; No Insurance Coverage Provided)

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

OFFICIAL USE

Postage \$
Certified Fee
Receipt Fee (Required)
Delivery Fee (Required)
Insurance & Fees \$

Postmark
Here

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Mary F. Audet
7463 Eastside Road
Chincoteague Va 23336

A. Signature
X
☐ Agent
☐ Addressee
B. Received by (Printed Name)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Ann Swift
7444 Eastside Rd
Chincoteague Va 23336
January 2001 See Reverse for Instructions

Article Number (Transfer from service label) 7001 2510 0005 4406 4319

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Receipt Fee (Required)		
Delivery Fee (Required)		
Postage & Fees	\$	

Sea Tag Lodge Condo Assoc
c/o Brian Sheron, 17120 Campbell
Poolesville MD 20837

January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
Sea Tag Lodge Condo Assoc
c/o Brian Sheron
17120 Campbell Farm Rd
Poolesville MD 20837

2. Article Number
(Transfer from service label)

7001 2510 0005 4406 4289

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Receipt Fee (Required)		
Delivery Fee (Required)		
Postage & Fees	\$	

J. Freese, James R. Swift III, Ann F. Swift
7444 Eastside Road
Chincoteague VA 23336

January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
MARK J. Freese,
James R. Swift III
Ann F. Swift
7444 Eastside Road
Chincoteague VA 23336

Article Number
(Transfer from service label)

7001 2510 0005 4406 4272

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Receipt Fee (Required)		
Delivery Fee (Required)		
Postage & Fees	\$	

Allen H. Mitchell + June A. Mitchell
13747 Glissens Mill Road
MT Airy MD 21771

January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
Allen H. Mitchell
+ June A. Mitchell
13747 Glissens Mill Rd
MT Airy MD 21771

Article Number
(Transfer from service label)

7001 2510 0005 4406 4265

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Postage and Fee Required)		
Restricted Delivery Fee (Postage and Fee Required)		
Total Postage & Fees	\$	

To: Charles D. Kambarn
Box No. 23879 Bailey Neck Dr
City, State, ZIP+4 Onancock VA 23417

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

RECIPIENT: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, on the front if space permits.

Article Addressed to:

Charles D. Kambarn
23879 Bailey Neck Dr.
Onancock VA 23417

Article Number

(Transfer from service label)

7001 2510 0005 4406 4258

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Postage and Fee Required)		
Restricted Delivery Fee (Postage and Fee Required)		
Total Postage & Fees	\$	

To: Leroy J. + Barbara M. Brownback
Box No. 4268 Sunrise Drive Circle
City, State, ZIP+4 Chincoteague VA 23336

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

RECIPIENT: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, on the front if space permits.

Article Addressed to:

Leroy J. + Barbara M. Brownback
4268 Sunrise Drive Circle
Chincoteague VA 23336

Article Number

(Transfer from service label)

7001 2510 0005 4406 4234

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Postage and Fee Required)		
Restricted Delivery Fee (Postage and Fee Required)		
Total Postage & Fees	\$	

To: Kathy A. + Gerald W. Scott
Box No. 4264 Sunrise Drive Circle
City, State, ZIP+4 Chincoteague VA 23336

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

RECIPIENT: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, on the front if space permits.

Article Addressed to:

Kathy A. + Gerald W. Scott
4264 Sunrise Drive Circle
Chincoteague, VA 23336

Article Number

(Transfer from service label)

7001 2510 0005 4406 4227

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To
GRAND Bay Court OA
90 Roger A. Limer, 130 2nd Av.
Pitman NJ 08071

PS Form 3800, January 2001

See Reverse for Instructions

COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Write your name and address on the reverse of this card to the back of the mailpiece, if space permits.

Addressed to:

Grand Bay Court Owners Assoc
Roger A. Limer
2nd Ave
Pitman NJ 08071

Number 7001 2510 0005 4406 4197
(from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To
LARRY T. HARPER
4262 Sunrise Drive Circle
Chincoteague VA 23336

PS Form 3800, January 2001

See Reverse for Instructions

COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Write your name and address on the reverse of this card to the back of the mailpiece, if space permits.

Addressed to:

T. HARPER
Sunrise Drive Circle
Chincoteague VA 23336

Number 7001 2510 0005 4406 4210
(from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To
Rocky R + Brenda K. Taylor
4256 Sunrise Drive Circle
Chincoteague VA 23336

PS Form 3800, January 2001

See Reverse for Instructions

COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Write your name and address on the reverse of this card to the back of the mailpiece, if space permits.

Addressed to:

Brenda K. Taylor
Sunrise Drive Circle
Chincoteague VA 23336

Number 7001 2510 0005 4406 4203
(from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

(1). DRAW AN OUTLINE OF EXISTING BUILDINGS(S) AND INDICATE DISTANCES FROM THE BUILDING(S) TO THE FRONT, REAR AND SIDE PROPERTY LINES.

(2). DRAW AN OUTLINE OF THE PROPOSED STRUCTURE USING DASHED LINES AND INDICATE DISTANCES TO THE OTHER BUILDINGS AND TO ALL PROPERTY LINES.

=====

SUBMITTED WITH ORIGINAL APPLICATION FOR VARIANCE

SITE PLAN

CASE NOTES

Time period for appeals not mandatory or jurisdictional. — The 90-day time period established by this section for a board of zoning appeals to make a decision is directory rather than mandatory and such a board does not lose jurisdiction to render a decision on appeal of a zoning administrator's action after 90 days have passed. *Tran v. Board of Zoning Appeals*, 260 Va. 654, 536 S.E.2d 913, 2000 Va. LEXIS 132 (2000).

Ordinance may permit continuances for board to render decision. — A local zoning ordinance permitting continuances beyond the 90-day period within which a board of zoning appeals is to render a decision does not conflict with this section in that the 90-day period established by this section is directory rather than mandatory. *Tran v. Board of Zoning Appeals*, 260 Va. 654, 536 S.E.2d 913, 2000 Va. LEXIS 132 (2000).

§ 15.2-2313. Proceedings to prevent construction of building in violation of zoning ordinance. — Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals. (1975, c. 521, § 15.1-496.3; 1997, c. 587.)

CASE NOTES

Meaning of "start of construction." — The operation of a backhoe for two hours to dig several holes for the base of a radio tower amounted to, at the most, minimal work and did not constitute "the start of construction" within the contemplation of this section. It could more properly be designated as work preliminary to construction. *WANV, Inc. v. Houff*, 219 Va. 57, 244 S.E.2d 760 (1978) (decided under prior law).

Aggrieved persons. — The parties who may be adversely affected by the construction of a radio tower in a particular residential district are those persons who own or live on property within, or in close proximity to, the district. They are the aggrieved persons, and

the ones contemplated by the section, which authorizes "a person who had no actual notice of the issuance of the permit" to institute proceedings to prevent construction of the building in violation of a zoning ordinance. *WANV, Inc. v. Houff*, 219 Va. 57, 244 S.E.2d 760 (1978) (decided under prior law).

Findings have weight of jury verdict. — In a proceeding under this section, findings of fact by the trial judge that the suit was filed within 15 days of the start of construction and that the suit was filed by a person who had no actual knowledge of the issuance of the permit had the weight of a jury verdict. *WANV, Inc. v. Houff*, 219 Va. 57, 244 S.E.2d 760 (1978) (decided under prior law).

§ 15.2-2314. Certiorari to review decision of board. — Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and

Continuances for — A local zoning ordinance beyond the board of zoning does not conflict with the 90-day period directory rather than mandatory. *Board of Zoning Appeals v. WNV, Inc.*, 2000 Va. 2d 913, 2000 Va.

Filing in violation — A zoning ordinance issued and used is subordinate to a violation of the start of the permit, litigation even without officer to (587.)

Notice of decision — A zoning ordinance, which no actual notice to institute prohibition of the building. *WNV, Inc. v. Board of Zoning Appeals*, 1760 (1978) (decided).

Jury verdict. — A zoning ordinance, findings of the suit was filed construction and person who had no notice of the permit. *WNV, Inc. v. Board of Zoning Appeals*, 1760 (1978) (decided).

Any person or — A zoning ordinance or bureau county or city lays after the

How a writ of — A zoning ordinance and shall be made and 10 days and shall not stay, on application, on application order. the original fee, sworn by the court. The pertinent and

material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, the decision of the board of zoning appeals shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, or application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the board may request that the court hear the matter on the question of whether the appeal was frivolous. (Code 1950, §§ 15-834 through 15-839, 15-850, 15-958.11; 1950, p. 176; 1962, c. 407, § 15.1-497; 1975, c. 641; 1988, c. 856; 1994, c. 705; 1996, c. 450; 1997, c. 587; 2001, c. 422; 2003, c. 568.)

The 2003 amendments. — The 2003 amendment by c. 568 substituted "30" for "thirty" in the first paragraph; substituted "10" for "ten" in the second paragraph; and added the fifth and sixth paragraphs.

Law Review. — For article, "Virginia Natural Resources Law and the New Virginia Wetlands Act," see 30 Wash. & Lee L. Rev. 19

(1973). For note, "Challenging Exclusionary Zoning Practices," see 10 U. Rich. L. Rev. 646 (1976). For comment on challenging rezoning in Virginia, see 15 U. Rich. L. Rev. 423 (1981). For note, "Protecting the Environment: Creating a Citizen Standing-to-Sue Statute in Virginia," see 26 U. Rich. L. Rev. 235 (1991).

CASE NOTES

The certiorari process does not authorize a trial court to rule on the validity or constitutionality of legislation underlying a board of zoning appeals decision. *Board of Zoning Appeals v. University Square Assocs.*, 246 Va. 290, 435 S.E.2d 385 (1993) (decided under prior law).

The Court of Appeals does not have jurisdiction of final decisions of circuit courts on appeal from decisions of boards

of zoning appeals. Appellate jurisdiction of such cases lies in the Supreme Court under § 8.01-670 A 3, assuming, but not deciding, that a petition for certiorari under this section is an "appeal" from a decision of a board of zoning appeals within the meaning of subdivision 1 of former § 17-116.05 (see now § 17.1-405). *Virginia Beach Beautification Comm'n v. Board of Zoning Appeals*, 231 Va. 415, 344 S.E.2d 899 (1986) (decided under prior law).

MINUTES OF THE MEETING JANUARY 12, 2006
CHINCOTEAGUE BOARD OF ZONING APPEALS

Members Present:

Mr. Myron Birch
Mr. Robert Cherrix
Mr. Jack Gilliss
Mr. Arthur Leonard
Mr. Mike McGee
Mr. Jesse Speidel
Mr. Donald Thornton
Kenny L. Lewis, Staff support

1. Call to Order

Mr. Birch called the meeting to order at 7:30 p.m.

2. Approval of Minutes of Meeting Held December 8, 2005

Mr. Leonard motioned, seconded by Mr. Speidel, to approve the minutes as presented. The motion was unanimously approved.

3. Appeal 06-01-01 A request from James & Nancy Lilly, 4462 Main Street, for a variance from Article 3, section 3.9.5 of the Town of Chincoteague's Zoning Ordinance. The petitioner wishes to construct a 14' x 18' screen porch to the rear of the existing structure. Current zoning requires the placement of the addition to be located 25' from the side lot line facing Lewis Street. The new addition would be place 12' from said lot line. This property is zoned Residential District R-3.

4. Petitioner's Comments

Mr. Lilly stated that his property was a corner lot and that the proposed porch would not face any houses that were immediately adjacent to his house. He added that the lot was narrow, so it would be very difficult to add on a porch and remain in compliance with the required setback.

Mr. Speidel asked Mr. Lilly how not having a porch would interfere with all reasonable beneficial use of the property taken as a whole. Mr. Lilly responded that it would be reasonable to have a back porch on a house. He added that it did not completely eliminate beneficial use of the property as a whole.

Mr. Leonard asked if the house itself was within the required setback. Mr. Lilly stated that that it was not, that it was 12' from the property line. Mr. Leonard stated that the rules regarding setback requirements were written well after the house was built.

Mr. Thornton asked if the front porch had been removed. Mr. Lilly responded that the concrete front porch and rotting side porch were removed because the house was going to be raised above the floodplain level. Mr. Thornton asked if a screen

porch could be replaced on the front of the house. Mr. Lilly responded that only a 7-foot porch could be added to the front to be in compliance with the front yard setback. He added that they would like to have a porch added as an enclosed eating area off of the kitchen, which is on the back of the house. Mr. Thornton stated that Mr. Lilly had an option of replacing the old side porch with a screen porch. Mrs. Lilly reiterated their desire to have the porch added as an enclosed extension of the kitchen.

Mr. Cherrix asked about the area of the side porch. Mr. Lilly responded that the proposed main side porch area was 18' x 7', and would also include a bathroom.

5. Board Action on Appeal

Mr. Cherrix stated that the porch would not be encroaching upon the side yard setback any more than the house currently was. He added that he thought the porch would look better on the back than on the front of the house.

Mr. Thornton stated that he felt that the Lillys should be allowed to build the porch as it would remain in line with the same type of building along that area of Main Street where it is very difficult to meet the setback requirements.

Mr. Gilliss stated that the road was built after the house, so he doesn't feel the Lillys should be denied.

Mr. Leonard and Mr. McGee agreed with Mr. Thornton in that they would not be impeding on anything that wasn't already there.

Mr. Speidel stated that he agreed that it was difficult to comply with the required setbacks along the area of Main Street in question. He felt, however, that not building the porch did not take away the property's beneficial use as a whole since he had other options, such as building the porch on the side of the house. Chairman Birch reminded him that he could not build very far on the side due to the location of the septic tank.

Mr. Leonard motioned, seconded by Mr. Speidel, to approve Mr. and Mrs. Lilly's request for a variance to build a screen porch onto the rear of their house at 4462 Main Street.

Ayes – Birch, Cherrix, Gilliss, Leonard, McGee, Thornton

Nays – Speidel

The motion carried. The request for a variance was approved.

6. Appeal 06-01-02 A request from Thomas Dix, agent for Pony Pines LLC, 7503 Eastside Road, for a variance from Article 3 sections 3.9.1(2) and 2.168 of the Town of Chincoteague's Zoning Ordinance and Article 16, section 16.03L of the Town's subdivision ordinance. The petitioner wishes to construct three separate buildings on the same parcel in lieu of all the units being attached. The

petitioner also wishes to install a 30' paved right-of-way in lieu of the required 50' right-of-way and 30' paved. This property is zoned Commercial District C-1.

7. Petitioner's Comments

Mr. Dix explained the variance request. He stated that his client wished to construct a condominium regime consisting of 19, 2-bedroom, multifamily units arranged as townhouses in three buildings with 2 units, 6 units, and 11 units. Mr. Dix added that there would be 58 parking spaces and a paved 30-foot right-of-way. He explained the hardship of the case due to the shape of the property. Mr. Dix introduced Mr. Robin Kohn, project architect and land planner; Mr. Charles Cooley of Shore Engineering; Mr. George Walters, land surveyor; and Mr. Fred Schmidt, President of Pony Pines, LLC.

Mr. Kohn explained the proposed layout of the project, including the location of the septic system. Mr. Speidel asked Mr. Lewis why three buildings were not allowed. Mr. Lewis responded that current zoning requires that the buildings be attached. Mr. Speidel asked Mr. Kohn if not being able to complete the project as proposed would interfere with all reasonable beneficial use of the property. Mr. Kohn responded that they thought it would. He added that they felt the best use of the property was residential, as opposed to commercial. Mr. Kohn addressed a concern regarding above-ground septic holding tanks. He advised that the units would all be underground and that the only thing aboveground would be the peat mounds on the southwest corner of the property. Mr. Kohn added that a privacy fence or shrubbery could enclose the surrounding area.

Mr. Cherrix asked how close the aboveground septic system was to the adjacent pond. Mr. Cooley responded by explaining the location and function of the wastewater system, as well as the proposed plans for drainage. Mr. Cherrix asked why the run-off couldn't be discharged across the street into the channel since Mr. Schmidt also owned that property. Mr. Cooley stated that that possibility could be discussed. Mr. Speidel asked why the 50-foot road right-of-way was not carried throughout the project. Mr. Cooley stated that Mr. Schmidt would address the matter.

Mr. Schmidt stated that a privacy fence would be placed along the property adjacent to Sunnywood Manor. Mr. Schmidt responded to a concern of an adjacent property owner regarding a deck on the second living level, or third level, of the unit. Mr. Schmidt stated that the deck could be omitted from the design if it caused a problem with adjacent property owners. He also agreed to landscape the drainfield area. Mr. Schmidt then responded to Mr. Speidel's question regarding road width. He read an excerpt from the appeal section of the Town's Zoning Ordinance. He reiterated that they felt the case was a hardship due to the shape of the property. Mr. Schmidt advised that the roadway would be maintained by the homeowner's association. Mr. Speidel argued that they could possibly use the property with less units and that Mr. Schmidt was not showing that not being able to build 19 units effectively prohibited or unreasonably restricted the utilization

of the property. Mr. Schmidt rebutted that according to the ordinance, they were not able to achieve the density that the ordinance says is appropriate for the property.

Mr. Gilliss and Mr. Schmidt had a discussion regarding the difference between condominiums and townhouses. Mr. Schmidt advised that the units would look like townhouses, but would actually be sold as condominiums.

Mr. Speidel asked what the hardship was for wanting to have 3 buildings as opposed to the allowable single building. Again, Mr. Schmidt reiterated that the hardship was due to the shape of the property. Mr. Speidel asked how many units could be built if the project plans adhered to current zoning requirements. Mr. Schmidt responded that that analysis had not been done.

Mr. Thornton asked how wide the back decks would be. Mr. Kohn responded that the second level decks were 10 feet wide. Mr. Thornton stated that if there were no decks, the proposed building could be moved closer to the 25-foot rear yard setback, and therefore the roadway could be 40 feet instead of 30 feet. Mr. Schmidt stated that the roadway was really a drive aisle. He stated that it did not make sense to require 50 feet of paved drive aisle when the main road [Eastside Road] was only 24 feet paved.

Mr. Schmidt advised that water run-off was approved to drain into the storm drain on Eastside Road. Mr. Thornton asked if all of the parking area would be paved. He asked if the water would drain better into the ground if it wasn't all paved. Mr. Cooley responded that the rear of the buildings would be grass. He also commented on the 50-foot right-of-way as having drainage ditches on either side for water run-off.

Mr. Thornton asked Mr. Lewis about the Board's authority to act on the road matter. Mr. Lewis stated that the ordinance allows the Public Works Director, the Zoning Administrator and the Health Department to deny an appeal where the Board cannot act on it. Mr. Thornton asked Mr. Lewis why it wasn't denied on that level. Mr. Lewis responded that the others developers had come before the Board, so he didn't want to single out a particular developer by not allowing them to come before the Board. Mr. Thornton asked if it was considered a parking lot and not a road. Mr. Lewis responded that the VDOT specifications require a roadway coming in off the main road. He added that the Planning Commission has recommended to the Council to have a requirement of a 50-foot stub road with a cul-de-sac on it. Mr. Lewis reiterated that the Town considers the proposed parking area a road and not a parking lot. Mr. Walters stated that the secondary roadways on the mainland are 30-foot right-of-ways.

Mrs. Cathy Scott stated that she lives right behind the proposed project location and that she does not begrudge Mr. Schmidt development of the property. However, she read a prepared statement, which included a request of the Board to

consider the future property values of the adjacent property owners if the homeowners association does not maintain the property. In the statement, she also implored that in the future the zoning rules be made so that they are not impossible to be adhered to.

Mrs. Mary Audet stated that she lives right beside the proposed project location and voiced several concerns. She felt that 19 units would be too many for that location. Mrs. Audet was also concerned about the rental of the units, including the traffic volume and noise associated with such. She asked if restrictions could be placed on the project. Another concern was drainage. She stated that she was concerned that the water would run off onto her property. Mrs. Audet stated that she was also very concerned about septic and about the septic draining onto her property as well.

Mr. Jim Frese stated that he lives and has a business on Eastside Road near the proposed development location. Mr. Frese explained that he had contacted the Sea Tag Homeowners Association and that each owner there approved of the project. He also mentioned that condominium regimes are exempt, according to state law, from the subdivision ordinance. Mr. Frese further posed the argument that each of the adjacent commercial properties had an 'entranceway' and not a 50-foot right-of-way. Therefore, he asked that the Board approve the parking area as a parking lot and not a roadway.

8. Board Action on Appeal

Mr. McGee stated that adjoining property owners had the right to be concerned about drainage and septic treatment systems, but that according to a survey done a few years ago on the shellfish sanitation program, the Island's water quality has changed very little in the past 50 years due to putting septic systems on hills and by using the mound system. He felt that the project would result in less traffic than a restaurant/bar. Mr. McGee addressed Mr. Speidel's concern about issuing a variance without showing a hardship as stated according to the Board's guidelines. Mr. McGee also disagreed with the 50-foot road requirement as he stated that he was against a 50-foot road coming off of a 20-foot road because it didn't make any sense. He stated that he hoped the Board approved the project.

Mr. Gilliss stated that he was concerned that people would purchase the properties for rentals.

Mr. Thornton stated that the drainage water should go north from his property to a catch basin. He stated that he thought the project would look good in that location. Mr. Thornton agreed that the parking area should be considered a parking lot and not a road, and that he did not agree with the 50-foot road requirement. He stated that he approved the project.

Mr. Cherrix stated that if the project was approved, he felt they should be required to put in some drainage so that the excess water could drain to the waterfront

property across the street and into the channel. Mr. Cherrix also felt that if the project was approved, the Board should require that shrubbery or a buffer of some kind be placed around the septic system for aesthetics and also that the decks on the third level should not be allowed.

Mr. Speidel apologized to Mr. Schmidt for interrupting him when he was speaking earlier. Mr. Speidel stated that he agreed with Mr. McGee that the 50-foot road requirement was not necessary, but that he was here to decide whether the strict application of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property. He stated that he also felt that 3 buildings would look better than 1, but that he was here to decide whether it would restrict utilization of the property. Mr. Speidel felt that it did not restrict utilization of the property totally. He felt that even though he agreed with other members of the Board, they were not here to change the law, but to go with the standards that were prescribed.

Mr. Thornton rebutted by pointing out the shape of the property and the fact that the project was going to have less than the allowable number of units.

Mr. McGee motioned, seconded by Mr. Robert Cherrix, to approve the Pony Pines, LLC project, provided that drainage be installed to move excess water to the waterfront property across the street and into the channel, that the third level decks be denied, and that a border be planted around the septic systems to hide the systems.

Ayes – Birch, Cherrix, Gilliss, Leonard, McGee, Thornton

Nays – Speidel

The motion carried. The request for a variance was approved.

9. Appeal 06-01-03 A request from William Baczek, 6246 Wagner Lane, for a variance from Article 3, section 3.9.3.2 of the Town of Chincoteague's Zoning Ordinance. The petitioner wishes to construct a single family dwelling on said property. The new structure will be placed 12' from the rear lot line. Current zoning requires the placement of the residence to be located 25' from the rear lot line. This property is zoned Residential District R-3.

10. Petitioner's Comments

Mr. Baczek explained that his lot was 75' x 100'. He stated that if the waterfront side of the house was the front of the house, there would be no setback problem. He stated that since the road comes into the side of the house, the proposed project will not comply with the rear yard setback. Mr. Baczek stated that he could build a detached porch, which is what the plans show, but would prefer to have the porch attached to the house. He mentioned several reasons why he felt it would be better to have the porch connected to the house and added that the adjoining property owners agreed to the project.

Mr. Thornton asked why Mr. Baczek couldn't build the porch on the waterfront side of the house. Mr. Baczek responded that a screened porch would not be feasible on the northeast (waterfront) side of the house due to wind and weather.

Mr. Baczek stated that on the ground level, he was within the old footprint, which was 23 1/2' from the rear lot line. Mr. Cherrix pointed out that there would be no means of ingress and egress if the rear deck [screened porch] was detached from the rear of the house. Mr. Thornton stated that he felt he could build a screened-in porch on the waterfront side of the house and still be in compliance with the ordinance. Mr. Baczek rebutted that it would be difficult to build the house between the 25' front and rear yard setbacks when the depth of the property was only 75'. Mr. Baczek stated that he was going to build the deck anyway, since a detached deck only required a setback from the rear lot line of 5'. However, he really wished to have the deck attached so that he could place a door off of the kitchen that leads to the screened porch.

11. Board Action on Appeal

Mr. Speidel explained that it would make sense to attach the deck, but by the law, he felt that there was no hardship in this case.

Mr. Gilliss stated that there was no argument from the neighbors on the setback encroachment.

Mr. Thornton stated that he could solve the problem by placing the kitchen in another location where the deck could be attached, such as along the waterfront side of the house.

Mr. Cherrix stated that he agreed with Mr. Thornton. He agreed that he would want his deck attached also, but that changes could be made so as to be in compliance with the setback requirements.

Chairman agreed with Mr. Gilliss in that there seemed to be no complaints from the adjoining property owners. Mr. Lewis stated that he had received an approval notice from Mr. Reggie Birch, but that he hadn't received a response from the other two neighbors.

Mr. Leonard stated that he understood that the waterfront side of the house receives rough wind and weather and why Mr. Baczek wanted to protect the screened porch from such. Chairman Birch added that there were a lot of houses on the Island with less than 15' between them.

Mr. McGee asked for clarification from Mr. Lewis regarding ingress and egress from the detached deck/porch to the rear of the house. Mr. Lewis explained the requirements. Mr. Leonard stated that a detached structure on pilings would not be as structurally sound as that of an attached structure.

Mr. Leonard motioned, seconded by Chairman Birch, to approve the request for a variance to build a single family dwelling 12' from the rear lot line.

Ayes – Birch, Gilliss, Leonard

Nays – Cherrix, McGee, Speidel, Thornton

The motion was defeated. The request for a variance was denied.

12. Election of Officers

Mr. Leonard motioned, seconded by Mr. Thornton, to move the election of officers to the next meeting. The motion was unanimously approved.

13. Adjournment

Mr. Leonard motioned, seconded by Mr. McGee, to adjourn the meeting. The motion was unanimously approved.

Myron Birch, Chairman